

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 98-0057 (PLF)
	)	
MARIA HSIA,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

This case is before the Court on defendant Maria Hsia's Motion No. 8, to Strike Surplusage. This Court already has ruled on most of the challenged words and phrases. See Opinion of August 13, 1998 at 12-21. In light of the bill of particulars filed by the government, it now appears that references in the indictment to acts of concealment, cover-ups and the destruction and alteration of documents in November 1996 are irrelevant. Because these statements also are prejudicial, they will be stricken. See United States v. Oakar, 111 F.3d 146, 157 (D.C. Cir. 1997).

The indictment states that "[i]n furtherance of their scheme to defraud, defendant Maria Hsia and co-conspirator IBPS concealed and covered-up their illegal activities. In particular, IBPS destroyed, altered, and created documents, and disguised in its books and records the fact that IBPS had used corporate funds to make political contributions." Indictment at ¶ 13(e). The indictment goes on to allege that co-conspirator IBPS undertook three "overt acts" in November 1996 which essentially consisted of destroying documents and altering documents and ledgers to conceal the conduit scheme. See Indictment at ¶¶ 40(qq)-

40(ss). It is undisputed that the nature of these allegations is highly prejudicial, and Ms. Hsia claims that they are irrelevant because the acts were not a part of the scope of the charged conspiracy and because the acts were taken by IBPS without Ms. Hsia's knowledge.

The Court initially indicated that it was "concerned" about these references but that "[o]n the basis of the allegations in the indictment that the acts of concealment, cover-up and destruction of documents were in furtherance of the scheme to defraud that has been alleged, the Court will deny Ms. Hsia's request to strike these references." Opinion of August 13, 1998 at 16-17. The Court also ordered the government to provide Ms. Hsia with a bill of particulars which was to include the "scope of the original conspiratorial agreement and in particular whether it was part of that agreement to undertake acts of concealment such as those alleged in the indictment." Order of August 13, 1998 at 2. The Court stated that if the bill of particulars "confirms Ms. Hsia's assertion that [the] acts of concealment and cover-up were not encompassed within the alleged scope of the original conspiratorial agreement . . . her motion to strike will be granted." Opinion of August 13, 1998 at 17.

In its Bill of Particulars, the government has clarified that it "does not contend that the original conspiratorial agreement specifically contemplated the destruction and alteration of Temple documents, and the creation of false Temple documents. Nor does the Government have evidence that the defendant knew of or sought to procure such acts." Bill of Particulars at 1. Since it appears that the acts of concealment were not encompassed within the scope of the original agreement, they are neither "overt acts nor manner and means of carrying out the conspiracy, and they are irrelevant to the offense charged. See Opinion of August 13,

1998 at 16-17.<sup>1</sup> Nor is there any evidence that Ms. Hsia engaged in any conduct relating to the destruction, alteration or creation of documents or even that she knew that others were engaged in such conduct. Accordingly, it is hereby

ORDERED that paragraphs 13(e), 40(qq), 40(rr) and 40(ss) of the indictment are stricken.

SO ORDERED.

DATE:

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PAUL L. FRIEDMAN  
United States District Judge

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<sup>1</sup> The government argues that “the destruction, alteration and creation of such documents took place during a time that the original conspiratorial agreement was still in effect.” Bill of Particulars at 1-2. That is not enough. *See* Opinion of August 13, 1998 at 16-17 n.8. If the government had evidence that Ms. Hsia knew of these actions or participated in them, that evidence might be relevant and admissible at trial to establish her consciousness of guilt. *See, eg., United States v. Marchesani*, 457 F.2d 1291, 1298 (6th Cir. 1972). By its own admission, however, it has no such evidence.